

ESTTA Tracking number: **ESTTA880285**

Filing date: **02/28/2018**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	Societe des Produits Nestle S.A.
Granted to Date of previous extension	03/28/2018
Address	Case Postale 353 Vevey, 1800 SWITZERLAND

Attorney information	Andrea Anderson Holland & Hart LLP P.O. Box 8749 __ Attn: Trademark Docketing Denver, CO 80201 UNITED STATES Email: docket@hollandhart.com, aanderson@hollandhart.com, ccmliller@hollandhart.com, mamooore@hollandhart.com
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**Applicant Information**

Application No	87300078	Publication date	11/28/2017
Opposition Filing Date	02/28/2018	Opposition Period Ends	03/28/2018
Applicant	Chen, Huanyong 105 Meihua Rd, Unit 3-203 Shenzhen, 518000 CHINA		


**Goods/Services Affected by Opposition**


<p>Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Adhesives for dentures; Artificial tears; Bacterial preparations for medical and veterinary use; Bacteriological culture mediums; Bacteriological preparations for medical and veterinary use; Breast pads; Candy, medicated; Chemical conductors for electrocardiograph electrodes; Cord blood for medical purposes; Dental nitrous oxide; Diagnostic biomarker reagents for medical purposes; Diagnostic preparations for veterinary purposes; Diapers for incontinents; Egg sanitizing preparations; Fumigating pastilles; Fumigating sticks; Haemorrhoid preparations; Hemorrhoid preparations; Herbicides; Insect repelling tags for pets; Medicinal mud; Miticides; Molding wax for dentists; Nitrous oxide for medical use; Nursing pads; Placebo pills for medical use; Preparations for destroying dry rot fungus; Preparations for the treatment of burns; Probiotic supplements; Propolis dietary supplements; Raticides; Royal jelly dietary supplements; Soy protein dietary supplements; Surgical implants comprised of living tissues; Teething gels; Tobacco-free cigarettes for smoking cessation purposes; Veterinary diagnostic reagents</p>
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act Section 2(d)
No bona fide intent to use mark in commerce for identified goods or services	Trademark Act Section 1(b)

### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	4699875	Application Date	08/22/2014
Registration Date	03/10/2015	Foreign Priority Date	NONE
Word Mark	ZUKE'S		
Design Mark			
Description of Mark	The mark consists of the word "ZUKE'S" shown in the color brown outlined in yellow, contained in an oval design outlined in white. The body of the oval contains the likeness of an orange mountain skyline with a yellow sky above it.		
Goods/Services	Class 031. First use: First Use: 2012/09/00 First Use In Commerce: 2012/09/00 Food for animals		

U.S. Registration No.	3683070	Application Date	03/04/2009
Registration Date	09/15/2009	Foreign Priority Date	NONE
Word Mark	ZUKE'S		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 031. First use: First Use: 1998/11/01 First Use In Commerce: 1998/11/01 Consumable pet chews; Pet treats		

Attachments	86374691#TMSN.png( bytes ) 77683537#TMSN.png( bytes ) Notice of Opposition.pdf(422063 bytes )
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Signature	/Andrea Anderson/
Name	Andrea Anderson

Date	02/28/2018
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<p>Société des Produits Nestlé S.A.,</p> <p style="text-align: center;">Opposer,</p> <p>v.</p> <p>Huanyong Chen,</p> <p style="text-align: center;">Applicant.</p>	<p><b>Opposition No.:</b></p> <p><b>Mark:</b> ZHUQUE</p> <p><b>Serial No.</b> 87300078</p>
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**NOTICE OF OPPOSITION**

Société des Produits Nestlé S.A. (“Opposer”), a société anonyme organized and existing under the laws of Switzerland, with an address at Case Postale 353, Vevey, 1800, Switzerland, believes that it will be damaged by registration of the mark ZHUQUE in connection with *“Adhesives for dentures; Artificial tears; Bacterial preparations for medical and veterinary use; Bacteriological culture mediums; Bacteriological preparations for medical and veterinary use; Breast pads; Candy, medicated; Chemical conductors for electrocardiograph electrodes; Cord blood for medical purposes; Dental nitrous oxide; Diagnostic biomarker reagents for medical purposes; Diagnostic preparations for veterinary purposes; Diapers for incontinents; Egg sanitizing preparations; Fumigating pastilles; Fumigating sticks; Haemorrhoid preparations; Hemorrhoid preparations; Herbicides; Insect repelling tags for pets; Medicinal mud; Miticides; Molding wax for dentists; Nitrous oxide for medical use; Nursing pads; Placebo pills for medical use; Preparations for destroying dry rot fungus; Preparations for the treatment of burns; Probiotic supplements; Propolis dietary supplements; Raticides; Royal jelly dietary supplements; Soy protein dietary supplements; Surgical implants comprised of living tissues; Teething gels; Tobacco-free cigarettes for smoking cessation purposes; Veterinary diagnostic*

*reagents*” in International Class 5, as shown in U.S. Trademark Application Serial No. 87300078 (the “Application”), and hereby opposes it.

As grounds for the Opposition, Opposer alleges that upon actual knowledge with respect to itself and its own actions, and upon information and belief as to other matters:

1. The Application was published on November 28, 2017. Opposer filed a request for extension of time to oppose the Application on December 21, 2017, which was granted until March 28, 2018. This Opposition is timely filed.

2. Upon information and belief, Applicant is an individual having an address at 105 Meihua Rd., Unit 3-203, Shenzhen, China 518000.

3. Opposer’s licensee, Nestlé Purina PetCare Company and its predecessors (collectively, “Purina”), have produced and sold pet food and related products in the United States for more than 80 years. Purina has long been a leader in the field of animal nutrition.

4. Since prior to the filing dates of the Application and any actual dates of first use that Applicant can establish, Purina (or its predecessors) have used the mark ZUKE’S in connection with the marketing and sale of food and treats for animals.

5. Opposer owns U.S. Trademark Registration No. 4699875 for the following ZUKE’S & Design mark in connection with “food for animals” in International Class 31:



6. Opposer also owns U.S. Trademark Registration No. 3683070 for the standard character mark ZUKE’S in connection with “consumable pet chews; pet treats” in International Class 31.

7. U.S. Reg. Nos. 4699875 and 3683070 are together referred to as “Opposer’s Registrations.” Opposer’s Registrations are made of record in the attached Exhibit 1 consisting of printouts from the USPTO’s TSDR database showing current status and title.

8. Opposer’s Registrations are valid and subsisting and therefore constitute *prima facie* evidence of the validity of the mark set forth in Opposer’s Registrations and Opposer’s exclusive right to use the ZUKE’S mark in connection with food for animals.

9. Opposer’s Registration No. 3683070 is incontestable pursuant to 15 U.S.C. §§ 1065 and 1115(b), and therefore, constitutes conclusive evidence of the validity of the mark and Opposer’s exclusive right to use and license the mark in connection with the goods and services set forth in the registration.

10. Opposer’s Registrations also provide constructive notice of Opposer’s ownership of its ZUKE’S mark.

11. Purina and its predecessors have sold millions of dollars’ worth of food for animals and pet treats under the ZUKE’S mark and have invested significantly in the promotion of the ZUKE’S brand.

12. The ZHUQUE mark set forth in the Applications is virtually phonetically identical to the ZUKE’S mark and is also very similar in appearance.

13. The Application covers products related to animals, as do Opposer’s Registrations.

**COUNT I:**  
**Likelihood of Confusion**  
**(15 U.S.C. 1052(d))**

14. Opposer realleges and incorporates by reference the preceding allegations of this Notice of Opposition.

15. Opposer has priority by virtue of its prior use and registration of the ZHUKE'S mark.

16. The ZHUQUE mark set forth in the Application so closely resembles Opposer's prior used and registered ZUKE'S marks as to be likely, when used in connection with the animal-related goods set forth in the Application, to cause confusion, or to cause mistake, or to deceive under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

**COUNT II:**  
**Lack of Bona Fide Intent To Use The Mark**  
**(15 U.S.C. 1051(b))**

17. Opposer realleges and incorporates by reference the preceding allegations of this Notice of Opposition.

18. Applicant filed a Response to Office Action on October 11, 2017 in which Applicant submitted a specimen of use without the corresponding declaration and without claiming any actual dates of first use; hence the basis for the Application remains intent-to-use basis.

19. Upon information and belief, the specimen of use submitted in the Application is a gauze roll or other type of medical bandage, with writing in Chinese characters on the packaging.

20. The Application does not contain in the identification of goods medical bandages or other products that may reasonably be viewed as equivalent to the specimen of use.

21. Upon information and belief, Applicant has never manufactured, sold, licensed or partnered with any other entity to manufacture or sell each and every one of the goods listed in the Application in the United States.

22. Upon information and belief, at the time Applicant filed the Application, and continuing to date, Applicant did not and does not have the capacity to manufacture, distribute, or sell each and every one of the goods listed in the Application in the United States.

23. Upon information and belief, based on the sheer breadth of the diverse array of goods set forth in the Application, at the time Applicant filed the Application, and continuing to date, Applicant did not have and does not have a *bona fide* intent to use the ZHUQUE mark in United States commerce in connection with each of the applied-for goods. As such, the Application is invalid, and Applicant's mark is not entitled to registration pursuant to 15 U.S.C. § 1051(b).

WHEREFORE, Opposer believes that it will be damaged by registration of the mark shown in the Application and respectfully requests that the opposition be sustained and that registration of the Application be refused.



The Filing Fee of \$400.00 should be charged to Deposit Account No. 08-2623.

Date: February 28, 2018

Respectfully submitted,

/Andrea Anderson/

Andrea Anderson  
Catherine C. Miller  
HOLLAND & HART LLP  
P.O. Box 8749  
Attn: Trademark Docketing  
Denver, Colorado 80201  
Phone: (303) 473-2710  
[docket@hollandhart.com](mailto:docket@hollandhart.com)  
[aanderson@hollandhart.com](mailto:aanderson@hollandhart.com)  
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[mamoore@hollandhart.com](mailto:mamoore@hollandhart.com)

**Attorneys for Opposer**  
**Société des Produits Nestlé S.A.**

## **CERTIFICATE OF SERVICE**

Consistent with the Trademark Trial and Appeal Board Manual of Procedure Rule 309.02(c)(1) (amended January 14, 2017), service of the above NOTICE OF OPPOSITION will be effected by the Board. To facilitate the Board, the following physical address and email address is available for the Applicant via TSDR:

Huanyong Chen  
105 Meihua Rd.  
Unit 3-203  
Shenzhen, China 518000  
[472657178@qq.com](mailto:472657178@qq.com)

# **Exhibit 1**

TSDR now includes a Post Registration Maintenance Tab. When viewing a Registered mark, users will now find a new 3rd tab providing Post Registration information next to the "Status" and "Document" tabs, below the search text box. The tab will not appear if the mark is not registered.

STATUS

DOCUMENTS

MAINTENANCE

[Back to Search](#)



Print

**Generated on:** This page was generated by TSDR on 2018-02-28 14:23:14 EST

**Mark:** ZUKE'S



**US Serial Number:** 86374691

**Application Filing Date:** Aug. 22, 2014

**US Registration Number:** 4699875

**Registration Date:** Mar. 10, 2015

**Filed as TEAS Plus:** Yes

**Currently TEAS Plus:** Yes

**Register:** Principal

**Mark Type:** Trademark

**TM5 Common Status**

LIVE/REGISTRATION/Issued and Active

**Descriptor:**



The trademark application has been registered with the Office.

**Status:** Registered. The registration date is used to determine when post-registration maintenance documents are due.

**Status Date:** Mar. 10, 2015

**Publication Date:** Dec. 23, 2014

▼ **Mark Information**

▲ Collapse All

**Mark Literal Elements:** ZUKE'S

**Standard Character Claim:** No

**Mark Drawing Type:** 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

**Description of Mark:** The mark consists of the word "ZUKE'S" shown in the color brown outlined in yellow, contained in an oval design outlined in white. The body of the oval contains the likeness of an orange mountain skyline with a yellow sky above it.

**Color Drawing:** Yes

**Color(s) Claimed:** The color(s) orange, yellow, brown and white is/are claimed as a feature of the mark.

**Design Search Code(s):** 01.03.04 - Galaxies; Sky, starry; Starry sky  
06.01.04 - Mountains (landscapes); Scenery with mountains  
26.03.17 - Ovals, concentric; Concentric ovals and ovals within ovals; Concentric ovals; Ovals within ovals  
26.03.21 - Ovals that are completely or partially shaded

▼ **Related Properties Information**

**Claimed Ownership of US Registrations:** [3683070](#)

▼ **Goods and Services**

**Note:**

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks \*..\* identify additional (new) wording in the goods/services.

**For:** Food for animals

**International Class(es):** 031 - Primary Class

**U.S Class(es):** 001, 046

**Class Status:** ACTIVE

**Basis:** 1(a)

**First Use:** Sep. 2012

**Use in Commerce:** Sep. 2012

▼ **Basis Information (Case Level)**

<b>Filed Use:</b>	Yes	<b>Currently Use:</b>	Yes	<b>Amended Use:</b>	No
<b>Filed ITU:</b>	No	<b>Currently ITU:</b>	No	<b>Amended ITU:</b>	No
<b>Filed 44D:</b>	No	<b>Currently 44D:</b>	No	<b>Amended 44D:</b>	No
<b>Filed 44E:</b>	No	<b>Currently 44E:</b>	No	<b>Amended 44E:</b>	No
<b>Filed 66A:</b>	No	<b>Currently 66A:</b>	No		
<b>Filed No Basis:</b>	No	<b>Currently No Basis:</b>	No		

### ▼ Current Owner(s) Information

<b>Owner Name:</b>	Societe des Produits Nestle S.A.				
<b>Owner Address:</b>	Case Postale 353 Intellectual Property Department Vevey SWITZERLAND 1800				
<b>Legal Entity Type:</b>	société anonyme (sa)	<b>State or Country Where Organized:</b>	SWITZERLAND		

### ▼ Attorney/Correspondence Information

#### Attorney of Record

<b>Attorney Name:</b>	Andrea K. Cannon	<b>Docket Number:</b>	FL 111979		
<b>Attorney Primary Email Address:</b>	<a href="mailto:TMOoffice@purina.nestle.com">TMOoffice@purina.nestle.com</a>	<b>Attorney Email Authorized:</b>	Yes		

#### Correspondent

<b>Correspondent Name/Address:</b>	ANDREA K. CANNON NESTLE PURINA PETCARE COMPANY CHECKERBOARD SQUARE SAINT LOUIS, MISSOURI UNITED STATES 63164-0001				
<b>Phone:</b>	3149825192	<b>Fax:</b>	3149821613		
<b>Correspondent e-mail:</b>	<a href="mailto:TMOoffice@purina.nestle.com">TMOoffice@purina.nestle.com</a>	<b>Correspondent e-mail Authorized:</b>	Yes		

#### Domestic Representative

<b>Domestic Representative Name:</b>	Andrea K. Cannon	<b>Phone:</b>	3149825192		
<b>Fax:</b>	3149821613				
<b>Domestic Representative e-mail:</b>	<a href="mailto:TMOoffice@purina.nestle.com">TMOoffice@purina.nestle.com</a>	<b>Domestic Representative e-mail Authorized:</b>	Yes		

### ▲ Prosecution History

### ▼ TM Staff and Location Information

#### TM Staff Information - None


#### File Location

<b>Current Location:</b>	PUBLICATION AND ISSUE SECTION	<b>Date in Location:</b>	Mar. 10, 2015		
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### ▲ Assignment Abstract Of Title Information - None recorded

### ▼ Proceedings - Click to Load

TSDR now includes a Post Registration Maintenance Tab. When viewing a Registered mark, users will now find a new 3rd tab providing Post Registration information next to the "Status" and "Document" tabs, below the search text box. The tab will not appear if the mark is not registered.

STATUS	DOCUMENTS	MAINTENANCE	<a href="#">Back to Search</a>	Print	
<b>Generated on:</b> This page was generated by TSDR on 2018-02-28 14:28:29 EST					
<b>Mark:</b> ZUKE'S		<b>ZUKE'S</b>			
<b>US Serial Number:</b>	77683537	<b>Application Filing Date:</b>	Mar. 04, 2009		
<b>US Registration Number:</b>	3683070	<b>Registration Date:</b>	Sep. 15, 2009		
<b>Register:</b>	Principal				
<b>Mark Type:</b>	Trademark				
<b>TM5 Common Status Descriptor:</b>	LIVE/REGISTRATION/Issued and Active				
	The trademark application has been registered with the Office.				
<b>Status:</b>	A Sections 8 and 15 combined declaration has been accepted and acknowledged.				
<b>Status Date:</b>	Jan. 28, 2015				
<b>Publication Date:</b>	Jun. 30, 2009				
<b>▼ Mark Information</b> <span style="float: right;"><a href="#">▲ Collapse All</a></span>					
<b>Mark Literal Elements:</b>	ZUKE'S				
<b>Standard Character Claim:</b>	Yes. The mark consists of standard characters without claim to any particular font style, size, or color.				
<b>Mark Drawing Type:</b>	4 - STANDARD CHARACTER MARK				
<b>▼ Goods and Services</b>					
<b>Note:</b> The following symbols indicate that the registrant/owner has amended the goods/services:					
<ul style="list-style-type: none"> <li>• Brackets [...] indicate deleted goods/services;</li> <li>• Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and</li> <li>• Asterisks *..* identify additional (new) wording in the goods/services.</li> </ul>					
<b>For:</b>	Consumable pet chews; Pet treats				
<b>International Class(es):</b>	031 - Primary Class	<b>U.S Class(es):</b>	001, 046		
<b>Class Status:</b>	ACTIVE				
<b>Basis:</b>	1(a)				
<b>First Use:</b>	Nov. 01, 1998	<b>Use in Commerce:</b>	Nov. 01, 1998		
<b>▼ Basis Information (Case Level)</b>					
<b>Filed Use:</b>	Yes	<b>Currently Use:</b>	Yes	<b>Amended Use:</b>	No
<b>Filed ITU:</b>	No	<b>Currently ITU:</b>	No	<b>Amended ITU:</b>	No
<b>Filed 44D:</b>	No	<b>Currently 44D:</b>	No	<b>Amended 44D:</b>	No
<b>Filed 44E:</b>	No	<b>Currently 44E:</b>	No	<b>Amended 44E:</b>	No
<b>Filed 66A:</b>	No	<b>Currently 66A:</b>	No		
<b>Filed No Basis:</b>	No	<b>Currently No Basis:</b>	No		
<b>▼ Current Owner(s) Information</b>					
<b>Owner Name:</b>	SOCIETE DES PRODUITS NESTLE S.A.				
<b>Owner Address:</b>	CASE POSTALE 353 VEVEY SWITZERLAND 1800				
<b>Legal Entity Type:</b>	SOCIETE ANONYME	<b>State or Country Where Organized:</b>	SWITZERLAND		

## ▼ Attorney/Correspondence Information

### Attorney of Record

Attorney Name: Andrea K. Cannon

Docket Number: TM-39288-US-

Attorney Primary Email: [TMOffice@purina.nestle.com](mailto:TMOffice@purina.nestle.com)

Attorney Email Authorized: Yes

Address:

### Correspondent

Correspondent Name/Address: Andrea K. Cannon

Nestle Purina PetCare Company

Checkerboard Square

Legal - Brand IP (9T)

St. Louis, MISSOURI UNITED STATES 63164

Phone: 3149825192

Fax: 3149821613

Correspondent e-mail: [TMOffice@purina.nestle.com](mailto:TMOffice@purina.nestle.com)

Correspondent e-mail Authorized: Yes

### Domestic Representative

Domestic Representative Name: Andrea K. Cannon

Phone: 3149825192

Fax: 3149821613

Domestic Representative e-mail: [TMOffice@purina.nestle.com](mailto:TMOffice@purina.nestle.com)

Domestic Representative e-mail Authorized: Yes

## ▲ Prosecution History

## ▼ Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted

Affidavit of Incontestability: Section 15 - Accepted

## ▼ TM Staff and Location Information

### TM Staff Information - None

### File Location

Current Location: TMO LAW OFFICE 114

Date in Location: Nov. 21, 2015

## ▼ Assignment Abstract Of Title Information

### Summary

▼ Conveyance Filter

Total Assignments: 2

Registrant: Performance Pet Nutrition LLC

### ▼ Assignment 1 of 2

▲ Collapse All

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: [5160/0712](#)

Pages: 5

Date Recorded: Nov. 25, 2013

Supporting Documents: [assignment-tm-5160-0712.pdf](#)

### Assignor

Name: [PERFORMANCE PET NUTRITION, LLC, D/B/A "ZUKE'S"](#)

Execution Date: Oct. 13, 2009

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: NEW MEXICO

### Assignee

Name: [ZUKE'S LLC](#)

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: DELAWARE

Address: 2257 MAIN AVENUE  
DURANGO, COLORADO 81302

### Correspondent

**Correspondent Name:** EMILY C. HOLMES

**Correspondent Address:** 410 SEVENTEENTH STREET, SUITE 2200  
DENVER, CO 80202

**Domestic Representative - Not Found**

▼ **Assignment 2 of 2**

**Conveyance:** ASSIGNS THE ENTIRE INTEREST

**Reel/Frame:** [5240/0836](#)

**Pages:** 5

**Date Recorded:** Mar. 20, 2014

**Supporting Documents:** [assignment-tm-5240-0836.pdf](#)

**Assignor**

**Name:** [ZUKE'S LLC](#)

**Execution Date:** Feb. 28, 2014

**Legal Entity Type:** LIMITED LIABILITY COMPANY

**State or Country Where Organized:** DELAWARE

**Assignee**

**Name:** [SOCIETE DES PRODUITS NESTLE S.A.](#)

**Legal Entity Type:** SOCIETE ANONYME

**State or Country Where Organized:** SWITZERLAND

**Address:** CASE POSTALE 353  
VEVEY, SWITZERLAND 1800

**Correspondent**

**Correspondent Name:** ANDREA K. CANNON

**Correspondent Address:** CHECKERBOARD SQUARE  
LEGAL IP, 9T  
ST. LOUIS, MO 63164

**Domestic Representative**

**Domestic Representative Name:** ANDREA K. CANNON

**Domestic Representative Address:** CHECKERBOARD SQUARE  
LEGAL IP, 9T  
ST. LOUIS, MO 63164

▼ **Proceedings - Click to Load**